



DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 522

RIN 3141-AA73

Submission of Gaming Ordinance or Resolution

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC) is amending the procedures for Submission of Gaming Ordinance or Resolution under the Indian Gaming Regulatory Act. The amendment revises the regulations controlling the submission and approval requirements of tribal gaming ordinances or resolutions and amendments thereof. Notably, the rule: authorizes the submission of documents in electronic or physical form; clarifies that the submission requirements apply to amendments of ordinances or resolutions; eliminates the requirement that an Indian tribe provide copies of all gaming regulations with its submission and instead requires a tribe to submit gaming regulations only upon request; initiates the 90-day deadline for the NIGC Chair ruling upon receipt of a complete submission; requires tribes that subsequently amend a gaming ordinance pending before the Chair to provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission; and eliminates the requirement that the NIGC Chair publish a tribe's entire gaming ordinance in the **Federal Register**, requiring notice of approval to be published with the Chair's approval letter instead. In addition, the NIGC has made other non-substantive revisions, such as citation to cross references, minor grammatical revisions, and formatting changes.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, National Indian Gaming Commission; 1849 C Street NW, MS 1621, Washington, DC 20240. Telephone: (202) 632-7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands.

On January 22, 1993, the NIGC published a final rule in the **Federal Register** called *Submission of Gaming Ordinance or Resolution*. 58 FR 5810. The rule added part 522, which established a process for Indian tribes to submit a gaming ordinance, resolution, or amendment for the NIGC Chair’s review and approval as required by 25 U.S.C. 2710(b)(2) and (d)(2)(a). The NIGC’s intent was to assist tribal gaming operators with maintaining compliance with IGRA and implement its provisions germane to gaming ordinances or resolutions. The Commission promulgated three minor amendments thereafter. 58 FR 16494, 73 FR 6029, and 80 FR 31994.

On March 23, 1993, the Commission amended its submission requirements at § 522.2(h) to include identification of a law enforcement agency that will take fingerprints and a description of the procedures for conducting a criminal history check by a law enforcement agency. 58 FR 16494.

On February 1, 2008, the Commission amended part 522’s submission requirements to codify that a tribe shall provide Indian lands or environmental and public health and safety documentation upon the NIGC Chair’s request, 25 U.S.C. 2710(b), (2)(e), and (d)(1). 73 FR 6029.

On June 5, 2015, the Commission amended part 522 to remove and update references to other regulations and make minor grammatical changes. 80 FR 31994.

It has been approximately twenty-nine years since the NIGC first promulgated part 522, with few revisions. During the intervening period, Indian gaming has undergone a meteoric expansion. During that expansion, the NIGC has continued to utilize part 522, and continues to look for ways to improve the regulations. The amendments reflect the Agency's intent to ensure that NIGC regulations meet the needs of the tribal gaming industry.

Through this rule, the NIGC amends its regulations to make several changes. The Commission will no longer require the submission of a physical copy of the ordinance. This rule will authorize the submission of documents in electronic or physical form, saving time and preventing inadvertent delays in review. The Commission will publish an updated bulletin that includes directions for electronic submission.

The amendment also clarifies that the 90-day deadline for the NIGC Chair's decision to approve an ordinance does not begin until the NIGC has received a complete submission and that the submission requirements apply to amendments of ordinances or resolutions. Submission of amendments will also require the submission of a conformed copy of the Ordinance.

The Commission also recognizes that a tribe's gaming ordinance often creates the tribal regulatory authority that will draft and implement the tribe's gaming regulations. As such, the Commission is amending the rule to eliminate the requirement that a tribe provide copies of all gaming regulations with its submission. Instead, tribes will only be required to submit gaming regulations upon request.

In most circumstances, if the NIGC identifies any issues during an ordinance review period that may lead to a disapproval recommendation to the Chair, it will discuss those issues with the submitting tribe and allow for the tribe to address the issues before a final decision is made by the Chair. This rule requires tribes that subsequently amend a gaming ordinance pending the Chair's decision to provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission.

This rule eliminates the requirement that the NIGC Chair publish a tribe's entire gaming ordinance in the **Federal Register**. Instead, the regulation will require the Agency to publish notice of each approved ordinance and the Chair's approval letter in the **Federal Register**. The Agency will continue its existing practice of publishing the ordinance itself on the NIGC's web site.

Finally, the NIGC has made other non-substantive revisions, such as corrections to cross references, minor grammatical revisions, and formatting changes.

II. Development of the rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission process. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendment to the gaming ordinance or resolution submission regulations were intended to improve the Agency's efficiency in processing gaming ordinance or resolution submissions, clarify existing regulations, and eliminate unnecessary obstacles for tribal gaming operators.

The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes. The Commission reviewed all comments received as part of the consultation process. After considering the comments received from the public and through tribal consultations, the Commission published a notice of proposed rulemaking on December 9, 2021, 86 FR 70067. The notice of proposed rulemaking indicated that comments were due on or before January 10, 2022. On January 14, 2022, 87 FR 2384, the NIGC published a correction to the notice of proposed rulemaking, clarifying that the comment period would close on February 7, 2022. On June 16, 2022, 87 FR 36280, the NIGC announced the reopening of the comment period until June 23, 2022.

The Commission reviewed all of the public's comments and now proposes these changes, which it believes will improve the gaming ordinance or resolution submission process.

III. Review of Public Comments

The Commission received the following comments in response to the notice of proposed rulemaking.

Comment: A commenter disagreed with requiring a tribe to submit to the Chair a copy of the tribe's constitution, governing document(s), or an accurate and true description of the tribe's governmental entity and authority to enact the submitted ordinance or resolution, with a request for approval of a class II or class III ordinance or resolution or amendment thereto. The commenter stated that the documents submitted should be sufficient.

Response: The Commission agrees and accepts this recommendation. Generally, a tribe submits a resolution enacted by the tribe's governing body that indicates it was adopted pursuant to tribal law that is signed by a tribal official who certifies the authenticity or accuracy of the resolution that adopted the class II or class III ordinance resolution, or amendment thereto. Generally, this is sufficient.

IGRA requires that the Chair shall approve an ordinance or resolution unless the Chair specifically determines that the ordinance or resolution was not adopted in compliance with the tribe's governing documents. 25 U.S.C. 2710(d)(2)(B). In order to make such a determination, the Chair may need copies of the tribe's governing documents or, for those tribes that do not have a written constitution or governing documents, a description of the governmental organization and authority to approve ordinances. The purpose is not to question or interpret the tribe's law or structure, but simply to ensure that any ordinance approved was enacted by the tribe pursuant to its own laws. As part of its existing review process, the NIGC often requests such documents. It proposed to add the submission here to clarify the Chair's responsibility, not to grant the Chair additional authority. The NIGC will meet our obligations, however, through existing internal processes to ensure that the ordinance was adopted pursuant to the tribe's own laws or rules. The Commission will also publish a Bulletin discussing IGRA's requirement in

this regard and the NIGC's process for ensuring that all ordinances are adopted by the authorized body pursuant to the tribe's governing requirements.

Comment: A commenter requested that we clarify the requirement that a tribe identify the entity that will take fingerprints and provide a copy of the procedures for conducting a criminal history check with a request for approval of a class II or class III ordinance, resolution, or amendment thereto.

Response: Currently, NIGC regulations require that a tribe provide the identification of the law enforcement agency that will take fingerprints and a description of the procedures for conducting a criminal history check with a request for approval of a class II or class III ordinance or resolution. 25 CFR 522.2(h). This requirement relates to background investigations performed by tribes on individuals seeking to be licensed as a key employee or primary management official of a gaming operation. The background investigation requires the tribe to request fingerprints from each key employee or primary management official.

The NIGC has long taken the position that a tribe or its tribal gaming regulatory authority qualifies as a law enforcement agency for this limited purpose. The current revision clarifies this position by removing the language suggesting that only traditional police agencies can take fingerprints.

Comment: A commenter supported the removal of the requirement to publish a tribe's class III gaming ordinance in the **Federal Register** along with the Chair's approval thereof. The commenter believes that it is a matter of tribal sovereignty for each tribe to determine whether to make its gaming ordinance publicly available.

Response: The Commission appreciates the comment. The requirement is being removed because IGRA requires all tribal gaming ordinances contain the same requirements concerning a tribe's sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, and background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each

ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register** is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B).

The Commission disagrees with the commenter's opinion that the decision to make a gaming ordinance publicly available should be determined by each tribe. Tribal gaming ordinances provide information of which the public, including tribal members, should be aware. This includes informing tribal members whether the tribe has elected to make per capita distribution, informing those seeking to be licensed as a primary management official or key employee the standards for obtaining a license, and informing patrons of a gaming operation the procedures for resolving disputes between the gaming public and the tribe. For this reason, the Commission posts every ordinance and approval thereof on its website (www.nigc.gov) under General Counsel, Gaming Ordinances.

IV. Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141– 0003.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC consultation policy specifies that it will consult with tribes on Commission Actions with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian

gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission and approval process.

List of Subjects in 25 CFR Part 522

Gambling, Indian--lands, Indian--tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, the Commission revises 25 CFR part 522 to read as follows:

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.

522.1 Scope of this part.

522.2 Submission requirements.

522.3 Amendment.

522.4 Amendment approvals and disapprovals.

522.5 Approval requirements for class II ordinances.

522.6 Disapproval of a class II ordinance.

522.7 Approval requirements for class III ordinances.

522.8 Disapproval of a class III ordinance.

522.9 Publication of class III ordinance and approval.

522.10 Approval by operation of law.

522.11 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

522.12 Individually owned class II gaming operations operating on September 1, 1986.

522.13 Revocation of class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712.

§522.1 Scope of this part.

This part applies to any class II or class III gaming ordinance or resolution, or amendment thereto adopted by a tribe.

§522.2 Submission requirements.

A tribe shall submit to the Chair via electronic or physical mail all of the following information with a request for approval of a class II or class III ordinance or resolution, or amendment thereto:

(a) One copy of an ordinance or resolution certified as authentic by an authorized tribal official that meets the approval requirements in §522.5(b) or §522.7.

(b) A copy of the procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in §556.2 of this chapter;

(c) A copy of the procedures to issue tribal licenses to primary management officials and key employees promulgated in accordance with §558.3 of this chapter;

(d) When an ordinance or resolution concerns class III gaming, a copy of any approved tribal-state compact or class III procedures as prescribed by the Secretary that are in effect at the time the ordinance or amendment is passed;

(e) A copy of the procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(f) A copy of the designation of an agent for service under §519.1 of this chapter; and

(g) Identification of the entity that will take fingerprints and a copy of the procedures for conducting a criminal history check. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

(h) A tribe shall provide Indian lands or tribal gaming regulations or environmental and public health and safety documentation that the Chair may request in the Chair's discretion. The tribe shall have 30 days from receipt of a request for additional documentation to respond.

§522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chair's approval, via electronic or physical mail, any amendment to an ordinance or resolution.

(b) A tribe shall submit to the Chair all of the following information with a request for approval of an amendment:

- (1) One copy of the amendment certified as authentic by an authorized tribal official;
- (2) Any submission under §522.2(b) through (h) that has been modified since its prior conveyance to the Chair for an ordinance, resolution, or amendment approval; and
- (3) A conforming copy of the entire ordinance or resolution.

§522.4 Amendment approvals and disapprovals.

(a) No later than 90 days after the submission of any amendment to a class II ordinance or resolution the Chair shall approve the amendment if the Chair finds that:

- (1) A tribe meets the amendment submission requirements of §522.3(b); and
- (2) The amendment complies with §522.5(b).

(b) No later than 90 days after a tribe submits any amendment to a class II ordinance for approval, the Chair may disapprove the amendment if the Chair determines—

- (1) A tribe failed to comply with the amendment submission requirements of §522.3; or
- (2) The amendment does not comply with §522.5(b).

(c) No later than 90 days after the submission of any amendment to a class III ordinance or resolution, the Chair shall approve the amendment if the Chair finds that—

- (1) A tribe meets the amendment submission requirements of §522.3(b); and
- (2) The amendment complies with §522.7(b) and (c).

(d) No later than 90 days after a tribe submits any amendment to a class III ordinance for approval, the Chair may disapprove the amendment if the Chair determines that—

- (1) A tribal governing body did not adopt the amendment in compliance with the governing documents of the tribe,
- (2) The amendment does not comply with §522.7(b) and (c); or

(3) A tribal governing body was significantly and unduly influenced in the adoption of the amendment by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(e) The Chair shall notify a tribe of its right to appeal a disapproval under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§522.5 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chair including all materials required under §522.2, the Chair shall approve the class II ordinance or resolution if the Chair finds that:

(a) A tribe meets the submission requirements contained in §522.2; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either §522.11 or §522.12;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

(c) A tribe that subsequently amends a gaming ordinance pending before the Chair shall also provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission.

§522.6 Disapproval of a class II ordinance.

(a) No later than 90 days after a tribe submits an ordinance for approval under §522.2, the Chair may disapprove an ordinance if it determines that a tribe failed to comply with the requirements of §522.2 or §522.5(b).

(b) The Chair shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§522.7 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chair under §522.2, the Chair shall approve the class III ordinance or resolution if:

(a) A tribe meets the submission requirements contained in §522.2;

(b) The ordinance or resolution meets the requirements contained in §522.5(b)(2) through (7); and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under §522.11.

§522.8 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of §522.7 and no later than 90 days after a submission under §522.2, the Chair shall disapprove an ordinance or resolution if the Chair determines that:

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of the tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) The Chair shall notify a tribe of its right of appeal a disapproval under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§522.9 Publication of class III ordinance and approval.

The Chair shall publish notice of approval of class III tribal gaming ordinances or resolutions in the **Federal Register**, along with the Chair's approval thereof.

§522.10 Approval by operation of law.

If the Chair fails to approve or disapprove an ordinance, resolution, or amendment thereto submitted under §522.2 or §522.3 within 90 days after the date of submission to the Chair, the tribal ordinance, resolution, or amendment thereto shall be considered to have been approved by the Chair but only to the extent that such ordinance, resolution, or amendment thereto is consistent with the provisions of the Indian Gaming Regulatory Act (IGRA or Act) and this chapter.

§522.11 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under §522.12), a tribal ordinance shall require:

- (a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chair;
- (b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in §522.4(b)(2);
- (c) That not less than 60 percent of the net revenues be income to the tribe;
- (d) That the owner pay an assessment to the Commission under §514.1 of this chapter;
- (e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and
- (f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits, and hours of operation.

§522.12 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under §502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in §522.11(a) through (d).

§522.13 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chair, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

- (a) A tribe shall submit to the Chair one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.
- (b) The Chairman shall publish such ordinance or resolution in the **Federal Register** and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the **Federal Register** under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect:

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

Dated: September 14, 2022.

E. Sequoyah Simermeyer,
Chairman.

Jeannie Hovland
Vice Chair.

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